IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06..07..2006

CORAM

THE HON'BLE MR.A.P.SHAH, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE D.MURUGESAN

W.P.Nos.18558 to 18560, 17555 and 17556, 18961, 19074 to 19077, 19078, 20902 and 21176 of 2006
and
Connected W.P.M.Ps.

Minor S.Janani,
rep. By his father and natural
guardian Mr.R.Srinivasan, ... Petitioner in W.P.No.18558/2006

Minor S. Shibi
rep. By his father and natural
guardian R. Selladurai ... Petitioner in W.P.No.18559/2006

Minor Seran Rangarajan
rep. By his father and natural
Guardian R. Rangaraj ... Petitioner in W.P.No.18560/06

Minor T. Nikkin
rep. by his father and natural
guardian Dr.S. Thiliban ... Petitioner in W.P.No.17555/2006

Minor V. Siddarthan
rep. By his father and natural
guardian Dr.P. Vaithyalingam ... Petitioner in W.P.No.17556/2006

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1. Minor S. Immonuel Arunkumar Dev
rep. By his father and natural
guardian Dr. D.B.D. Sathyakumar

2. Minor A.S. Bharathi Sezhian
rep. By his father and natural
guardian R.s. Anbu Selvam

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3. Minor S.Kerthivasan
rep. By his father and natural
guardian Sathya Narayanan ... Petitioners in
W.P.No.18961/2006

Minor S. Raasi
rep. By her father and natural
guardian B. Sankar ... Petitioner in
W.P.No.19074/2006

Minor R. Karthik Baalaji
rep. By her father and natural
guardian P. Rakkiyappan ... Petitioner in
W.P.No.19075/2006

Minor Saranya Ravi
rep. By her father and natural
guardian Dr. B. Ravi ... Petitioner in
W.P.No.19076/ 2006

Minor V.C. Sughapriya
rep. By her father and natural
guardian V.T. Chandran ... Petitioner in
W.P.No.19077/2006

Minor J. Nelcy
rep. By her father and natural
guardian S. Joseph ... Petitioner in
W.P.No.19078/2006

Mitra Prasad (Minor)
rep. By his father
Dr. V.G. Mohan Prasad ... Petitioner in
W.P.No.20902/2006

Minor M. Natarajan
rep. By his father and natural
guardian Dr. T. Mohan ... Petitioner in
W.P.No.21176/2006

- Vs -

1. State of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Fort St. George,
Chennai - 600 009.

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2. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 10. ..Respondents. 1 and 2 in all the Writ Petitions

3. Minor R. Vishnu
rep. By his father and natural
guardian G. Rajendran

4. R. Snekavalli
D/o. V.R. Ramanathan
(R3 and 4 impleaded as per order
dated 6.7.2006 made in
W.P.No.18558/06 (batch page No.8 para 5)
in W.P.M.P.Nos.2 and 3/06 by CJ and DMJ... Respondents 3 & 4 in W.P.No.18558/06

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration declaring Clause 8(i), (ii) and (iv) of the Prospectus issued for MBBS/BDS admissions for the Academic Year 2006 - 2007 as illegal and violative of Article 14 of the Constitution of India by considering two different evaluation of qualifying examination for inter se merit and inconsistent with the regulations of Medical Council of India regulating the admission to MBBS Medical Course orders. (in W.P.Nos. 18558 to 18560, 17555 and 17556, 18961, 19074 to 19077, 19078 and 21176/2006)

(ii) To issue a writ of Mandamus directing the respondents to make the selection for MBBS Course for the academic year 2006-2007 on the basis of Marks obtained by the eligible candidates in the prescribed science subjects at the qualifying examinations reduced to the base of 200 marks and the marks obtained for the maximum of 100 marks in the Entrance Examination (Tamilnadu Public Common Entrance Examination 2006) in the physical and Biological Sciences conducted by the Anna University as prescribed under clause 8 of the prospectus issued by the 2nd Respondent. (in W.P.No.20902/2006)

For Petitioners :: Mr.K.M.Vijayan, Senior Counsel
For M/s.La Law

Mr.Jayesh B.Dolia
For Mr.V.Kalyanaraman in
W.P.No.18961/06

Mr.N.S.Umapathy
For M/s.Gladys Daniel in
W.P.No.20902/06

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For Respondents1 and 2 in all Wps :: Mr.R.Viduthalai, Advocate General
Assisted by Mr.M.Sekar, Spl.G.P.(Edn.)
Mrs. Nalini Chidambaram and
Mr.V.Ayyadurai for impleaded party.

For Respondents 3 & 4
in W.P.No.18558/06

C O M M O N O R D E R

(Order of the Court was made by the Hon'ble The Chief Justice)

These petitions under Article 226 of the Constitution of India have been filed against the State of Tamil Nadu and the Secretary, Selection Committee, Directorate of Medical Education seeking a writ of declaration declaring Clause 8 (i), (ii) and (iv) of the Prospectus issued for MBBS/BDS admissions for the Academic Year 2006 - 2007 as illegal and violative of Article 14 of the Constitution of India as it considers evaluation of two different qualifying examinations for determining the inter se merit and is thus inconsistent with the Regulations of the Medical Council of India regulating the admission to MBBS Medical Course. The petitioners have filed these petitions in the interest of the entire student community as PIL, who have taken up the Entrance Examination for admission to Professional Courses for the Academic year 2006 - 2007.

2. The petitioners are students aspiring for admission to Under Graduate Medical Course. The petitioners had written their qualifying examination in 12th Standard under the State Board and had also appeared for the Common Entrance Examination conducted by the respondents through Anna University. The petitioners state that Clause 8 (i), (ii) and (iv) of the Prospectus, which provides for inclusion of the marks obtained in the qualifying examination to the extent of 200 marks along with the Entrance Examination marks to the extent of 100 marks, is totally against the principles of merit and is clearly discriminatory offending the provisions of Article 14 of the Constitution. It is pointed out that according to the rulings of the Supreme Court, admissions to Medical Colleges should be based strictly on merit and that there should be proper criteria for admissions. Reference in this connection is made to the Regulations framed by the Medical Council of India with the previous sanction of the Central Government by virtue of powers conferred on it under Section 33 of the Indian Medical Council Act, 1956. These Regulations are called "Regulations on Graduate Medical Education, 1997" published in Part III Section 4 of the Gazette of India, dated 17.05.1997. Regulation 4 prescribes, in considerable detail, the eligibility criteria for students with various types of education leading to 10 +2 or its equivalent. Regulation 5 is important and reads as follows:-

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"5. Selection of Students:-

The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:-

(1) In States, having only one medical college and one university/board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

(2) In States, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standard at qualifying examination conducted by different agencies;

(3) Where there is more than one college in a State and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

(4) A competitive entrance examination is absolutely necessary in the cases of institutions of all-India character;

(5) To be eligible for competitive entrance examination, the candidate must have passed any of the qualifying examinations as enumerated under the head-note 'Eligibility Criteria'."

The proviso to the Regulation prescribes the percentage of marks which are to be obtained at the qualifying or/and competitive examinations by students including those belonging to SC/ST or OBC classification. The petitioners' case is that sub-clause (ii) of Regulation 5 is attracted to the State of Tamil Nadu.

3. The petitioner state that Clause-8 of the Prospectus is totally contrary and inconsistent with the Regulations framed by the Medical Council of India, wherein Entrance Test is prescribed for a State like the State of Tamil Nadu having more than one Board conducting qualifying examination and particularly entrance test is contemplated only to achieve a uniform evaluation "as there may be variation of standards at qualifying examinations conducted by different agencies at different years". According to the petitioners, the impugned clause is ex facie discriminatory, as different set of students, who had taken qualifying examination conducted by different agencies and even as the students between the same agency, i.e., the State Board, who have written their

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qualifying examination on two different syllabi, were treated together by adding their qualifying examination marks upto 200 marks along with the entrance examination marks, which is wholly inconsistent with the norms of admissions laid down by the Medical Council of India.

4. A counter affidavit has been filed by the Additional Director of Medical Education/Secretary, Selection Committee on behalf of the respondents. It is stated that there is no prohibition under the Medical Council of India Act or the Graduate Medical Education Regulation, 1997 to prescribe better standard of selection process and all that is mentioned in Regulation 5(i) and (ii) is that a minimum of 50% marks in the science subjects at the qualifying examination and 40% in respect of SC/ST and Other backward Classes were prescribed as the minimum marks. Mere prescription of qualifying marks does not disentitle the candidates to score higher marks and increase the prospects of their selection for the MBBS Course. It is pointed out that in sub-clause (ii) of Regulation 5, the qualifying examination and the merit obtained in the competitive entrance examination is reckoned for the purpose of selection of candidates. It is further pointed out that the present system of combining the marks of qualifying examination as well as the Common Entrance Test has been in vogue for the past 22 years. It is stated that the Regulations framed by the MCI do not prescribe the method of selection to be resorted to and do not preclude the qualifying marks from being taken into consideration for ascertaining the comparative merits of candidates for admission to professional courses. It is stated that in none of the judgments rendered by the Supreme Court, the combination of qualifying marks and the entrance examination marks for ascertaining comparative merit of the candidate has been disapproved or deprecated. It is further stated that the policy of the Government is to see that there is always a level playing field between the rural and urban students and it has been observed over the period of years that the students hailing from peripheral towns and villages have scored better marks than the urban students. On the other hand, it is vice-versa when it comes to the question of Common Entrance Test. The reason for this is that the urban students are exposed to various training or rigorous short-term courses to undertake the Common Entrance Test and to score higher marks. On the other hand, there is no such facility available for students hailing from the peripheral towns and villages and the policy of combining the marks obtained in the qualifying examination as well as in the entrance test has been introduced with a view to remove such inequalities and this method has tested the time since 1984 and there is no reason to discontinue this test abruptly, especially, when in the past no complaint or objection was raised to the application of this method.

5. We have heard Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioners and Mr.R.Viduthalai, learned Advocate General appearing for the State of Tamil Nadu and Mrs.Nalini Chidambaram and Mr.Ayyadurai appearing for the interveners. Impleading Petitions W.P.M.P.Nos. 2 and 3 of 2006 are ordered.

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6. It appears that prior to 1984-85, admission to professional colleges was done on the basis of the marks in the qualifying examination (the class 12 Board Examination) plus the marks in the interview. From 1984-85 onwards, admission to medical colleges, dental colleges, engineering colleges, etc. in the State of Tamil Nadu have been done by holding Common Entrance Test and then adding the marks obtained by a candidate in the Common Entrance Test with the marks obtained in the qualifying examination (i.e. Plus Two Examination). In the year 2005, by G.O.Ms.No.184, Higher Education (J2) Department, dated 09.06.2005, the State Government abolished the Common Entrance Test, which was struck down by a Division Bench of this High Court in the judgment reported in 2005 (3) CTC 449 (Priyadarshini, N. Vs. The Secretary to Government, Education Department). In the year 2006, the State of Tamil Nadu passed a legislation by Tamil Nadu Act 2 of 2006, whereby Common Entrance Test was dispensed with for the State Board students alone, while retaining Common Entrance Test for other Board students as an eligibility test for admission to professional colleges and prescribing the marks obtained in the qualifying examination alone as the basis of admission for the State Board students. The said Act was challenged by one of the aspirants, which was struck down by a Division Bench of this High Court in the case of Minor Nishanth Ramesh Vs. The State of Tamil Nadu in W.P.No.3951 of 2006 decided on 27.02.2006. In view of the said decision of the Division Bench, the State of Tamil Nadu conducted the Common Entrance Test through Anna University and the results were also declared.

7. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner submitted that as per the MCI Regulations, Entrance Examination is mandatory for admission to MBBS and BDS Courses, which alone would satisfy the test of uniform evaluation. Any other criteria for determining the inter se merit between students other than the one single Common Entrance Test in determining the uniform evaluation between all the students will be ex facie discriminatory and violative of the equality clause guaranteed under Article 14 of the Constitution of India.

8. Mr.K.M.Vijayan, strongly relied on the decision of the Supreme Court in Ravindra Kumar Rai Vs. State of Maharashtra, AIR 1998 SC 1227 (vide paragraphs 6 and 7), in which it was observed as follows:-

> "We may at the outset point out that inasmuch as there are three Boards in Maharashtra State which conduct the qualifying examination and inasmuch as there are several universities, the State of Maharashtra would clearly fall under sub-clause (2) of Regulation 5 made by the Medical Council of India and not under sub-clause (3). The contention for the State that candidates from CBSE Board are small in number does not appeal to us. Inasmuch as there is no dispute that more than one Board conducts

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the qualifying examination and the Universities are more than one in number, sub-clause (3) of Regulation 5, in our view, is not attracted. It is also not possible for the State to say that conducting a Common Entrance Examination will delay the admission process or that it will be extremely difficult to conduct the examination. In fact the statement in the counter affidavit to the effect that the State has been conducting a common examination for 1,80,000 at the 10+2 level in the 7 divisional boards would itself show that the State is capable of conducting a Common Entrance Examination for admission to medical colleges, even if the number of students is large. We may also say that in several States, Common Entrance Examination is being conducted even before 1997 when these Regulations made by the Medical Council came into force. In fact in some States, entrance examination is conducted jointly for Engineering and Medical students also. We fail to see why the State of Maharashtra should say that it will be an arduous task.

In a recent judgment of this Court in Shri Chander Chinar Bada Akhara Udasin Society Vs. State of J & K, 1996 (5) SCC 732:1996 AIR SCW 3778, in the context of admission to Medical Colleges, and the need for a Common Entrance Examination, this Court observed (p.738) (of SCC); (at p.3782 of AIR) as follows:

'It need not be pointed out that the percentage of marks secured by different applicant at different type of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the State level, others at the National level including the Indian School Certificate Examination. The percentage secured at different examinations are bound to vary according to the standard applied by such examining bodies, which is well known. As such a common entrance examination has to be held'. (emphases supplied)

It has been, therefore, held a Common Entrance Examination has to be held.

9. The learned Senior Counsel has also relied on the Constitution Bench decision of the Supreme Court in Dr.Preethi Srivastava Vs. State of M.P., 1999 (7) SCC 120 vide paragraph – 28, in which it was observed thus:-

"A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously as soon as one concedes that there can be different standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have

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obtained very high marks in the MBBS Examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS Examination from more 'generous' universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialized education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialized education and the need to provide for some room for the backward even at the stage of specialized postgraduate education which is one step below the superspecialities." (emphasis supplied)

10. The learned counsel for the petitioners also relied on the decision of the Supreme Court in Dinesh Kumar Vs. Motilal Nehru Medical College, Allahabad, AIR 1985 SC 1059, in which it was observed:-

"The State Governments have also been equally guilty of indifference and inaction in not taking any steps for the purpose of holding an entrance examination which would test the relative merits of the students seeking admission to the minimum 30% non-reserved seats in the MBBS Course in the medical colleges. Some of the State Governments and Universities, we are informed, are proposing to fill up the minimum 30% non-reserved seats for the MBBS Course on the basis of the mark obtained by the students at the qualifying examinations held by different States and/or Universities, totally ignoring the fact that the standard of judging at these different qualifying examinations cannot, by its very nature be uniform. Some Universities may be very liberal in their marking while some other may be strict. There would be no comparable standards on the basis of which the relative merits of the students can be judged. It would be wholly unjust to grant admissions to the students by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution." (emphasis supplied)

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11. Mr.K.M.Vijayan, learned Senior Counsel, also drew our attention to a judgment of a Division Bench of this Court in Association of Private Schools Affiliated to CBSE etc. Vs. The State of Tamil Nadu etc., 1992 (2) LW 155. In that case, the question of validity of the G.O.No.555 passed by the Tamil Nadu Government, dated 15.06.1992 regarding admission of students for professional courses for the academic year 1992-93, and fixing up number of seats among students of State Higher Secondary (SHS) Education and Central Board of Secondary (C.B.S.) Education in the ratio of 98% and 2%. The reason for the G.O. according to the State Government was that they considered the press reports and a number of representations made by the parents to the effect that the valuation of Central Board of Secondary Education (CBSE) Plus-2 answer papers has been over-liberal in that year which would place the CBSE students at an unfair advantageous position and would be detrimental to the large number of students who had passed State Higher Secondary Course (HSC) Plus-2 Examination under the State Board of Higher Secondary Examination. The G.O. further stated that the Government felt convinced that an attempt had been made to over-liberalise the valuation in CBSE Plus-2 Examination, particularly in science subjects, so as to give an unfair advantage to the students. The Division Bench found that there was absence of nexus to the object to be achieved in the allotment of seats rounded to 2% for the CBSE/ISC students and 98% for HSC students. In paragraph 56 of the said judgment, the Division Bench summed up the legal position as follows:-

(1) It will not be proper to accept the subject marks allotted to the CBSE students as a basis to reckon their merit assessment with the HSC students unless all doubts as to the propriety of allotment of extra marks in the name of standardization/moderation are removed;

(2) Since it will not be proper to take into account the subject marks of the CBSE students for the purpose of reckoning their merit with the HSC students as a whole because, while there may be some basis for reckoning inter se merit of HSC students with reference to the marks allotted to them in Plus-2 examination, there may have no one from the other source (CBSE) for any equation of equality;

(3) While it may be possible to say that Government had no justification to intervene and introduce by an order a system of allotment of seats to the CBSE/ISE on the one hand and HSC students on the other, there is no reasonable nexus with the object to be achieved in the reservation of 2% for the CBSE/ISE students and 98% for the HSC students.

(4) When subject marks are no longer safe for assessing the merit of the candidates the entrance

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examination result is the safest and the only basis available for assessing inter se merit of the candidates coming either through CBSE/ISC or through HSC.

12. Mr.Vijayan also drew our attention to the following observations of the Division Bench in Minor Nishanth Case (supra) in paragraph – 15:-

> "This is because, as pointed out by several judgments of the Supreme Court, different examining bodies have different standards of marking, different syllabus etc. and hence, a student who appears for the examination conducted by an examining body which is stringent in granting marks will be discriminated vis-à-vis a student who appears for the examination conducted by an examining body which is liberal in granting marks. This will be violative of Article 14 of the Constitution as held in the said decisions".

13. In view of the clear pronouncements made repeatedly by the Supreme Court (as quoted above), we are in agreement with the submission of the learned counsel that a Common Entrance Test is mandatory in the State of Tamil Nadu since there are several examining Boards in the State. The question, however, which falls for our consideration, is, whether the consideration of the marks obtained in the qualifying Board Examinations along with the marks obtained in the Entrance Examination would be violative of Article 14 of the Constitution and the further question is whether the system of evaluation which is in vogue for more than 22 years can be said to be in any manner inconsistent and adverse to the scheme framed by the MCI vide Regulation 5 of MCI Regulations.

14. The submission of the learned Advocate General is that it is the policy of the State Government to give due weightage to Plus-2 public examination marks and Common Entrance Test for preparing the merit list for admission to professional colleges. Out of 300 marks, 200 marks are given for Plus-2 public examination and 100 marks are given for Common Entrance Test. This system has been in vogue for many years from 1984. As long as this policy is not in violation of any statute or against the MCI Regulations or unconstitutional, the weightage being given to Plus-2 public examination cannot be challenged. It is submitted that the pith and substance of the MCI Regulations is the compulsory conduct of Common Entrance Test as a criteria for ascertaining the merits of the candidates when there are more than one college/university in a State or Board conducting the qualifying examination. The Regulations do not prohibit the State Government to prescribe the comparative weightage being given as between the qualifying marks and the entrance examination marks so long as the basic criteria laid down by the MCI regulations are satisfied.

15. We find considerable substance in the submission of the learned Advocate General. It is well settled that both the Union as well as States have the power to legislate on education, including

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medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research or scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education, because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. This, however, does not preclude the State Government to make rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union Government in exercise of its powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But, any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. (See Dr.Preeti Srivastava Vs. State of M.P., (1999) 7 SCC 120). In this connection, reference may be made to the decision of a three Judge Bench of the Supreme Court in State of Tamil Nadu Vs. S.V.Bratheep and Others, (2004) 4 SCC 513. In that case, the Higher Education Department of the State of Tamil Nadu issued G.Os. dated 29.06.2002 and 13.02.2003 prescribing qualifications or minimum eligible marks for SC/ST as mere pass, most backward at 50% average marks in the related subject, backward at 55% average marks in the related subjects and other classes at 60% average marks in the related subjects. Thus, the appellant State had prescribed qualification of having secured certain percentage of marks in the related subjects which were higher than the minimum in the qualifying examination in order to be eligible for admission. The High Court quashed the G.Os. on the ground that the norms fixed by the State were in stark contradiction to the norms fixed by AICTE. Allowing the appeals in part, the Supreme Court held in paragraph 9 as follows:-

> "9.Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE. It is no doubt true that AICTE prescribed two modes of admission - one is merely

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dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State government than what had been prescribed by AICTE, can it be said that is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard would be fixed even the higher as stated by this Court in Adhiyaman Case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including Dr.Preeti Srivastava Case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education". (emphasis supplied)

16. In fact a similar question came up for consideration before the Supreme Court in Ambesh Kumar v. Principal, LLRM Medical College, Meerut reported in 1987 SC 400. The order dated 15.12.1982 issued by the State of Uttar Pradesh laying down qualification regarding eligibility of a candidate to be considered for admission to the post-graduate degree in M.D., M.S. and diploma course in M.D., M.S., etc., on the basis of the merit was questioned. The said Government order prescribed that a candidate, in order to be

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eligible for consideration for admission to the post-graduate course, must have secured 55% marks for admission to the post-graduate degree course and 52% marks for admission to the post-graduate diploma course. The above minimum eligibility of marks were higher than the marks prescribed by the Medical Council Regulations. It was argued that prescribing qualifications which are not in conformity with the qualification prescribed by the MCI Regulations is repugnant or encroaches upon or is in conflict with the power of the Central Legislature to make laws in respect of matters specified in entry 66 of List I of the Seventh Schedule to the Constitution. After referring to various earlier judgments, the Supreme Court has finally held as follows: -

> " 17. The impugned Government order dated 15.12.1982 lays down the criterion or eligibility qualification, i.e., obtaining of 55% marks by candidates seeking admission in the post-graduate degree course and obtaining of 52% marks by candidates seeking admission to post-graduate diploma course for being considered for selection. Entry 25 confers on the State Government as well as the State Legislature the power to make orders in respect of matters mentioned in entry25 of List III of the Seventh Schedule to the Constitution, i.e., with regard to medical education, the only limitation being that such order of the State Legislature will be subject to the provision of entry 66 of List I, i.e., coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The order in question merely specifies a further eligibility qualification for being considered for selection for admission to the post- graduate courses (degree and diploma) in the medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. This does not in any way encroach upon the regulations that have been framed under the provisions of S.33 of the Indian Medical Council Act. On the other hand in order to promote and further the determination of standards in institutions for higher education, the State Government who runs these colleges provide an additional eligibility qualification. (emphasis supplied)
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> 18. In the instant case the number of seats for admission to various post-graduate courses both degree and diploma in Medical Colleges is limited and a large number of

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candidates undoubtedly apply for admission to these courses of study. In such circumstances the impugned order laying down the qualification for a candidate to be eligible for being considered for selection for admission to the said courses on the basis of the merit as specified by the Regulations made under the Indian Medical Council Act cannot be said to be in conflict with the said Regulations or in any way repugnant to the said Regulations. It does not in any way encroach upon the standards prescribed by the said Regulations. On the other hand by laying down a further qualification of eligibility it promotes and furthers the standard in an institution."

17. A reference may also be made to a decision of the Division Bench of this Court in Dr.M.Sathiyapriya Vs. The Secretary to Government, Health and Family Welfare Department, Chennai (2005) 1 MLJ 378, wherein eligibility criteria for admission was increased from two years period of service in Primary Health Centre to three years by virtue of Clause 23. While upholding the validity of Clause 23, a Division Bench of this Court held that the government is empowered to lay down standards of eligibility for admission and it is a policy decision and such decision has to be fair, rational and reasonable and unless the policy decision is demonstrably capricious or arbitrary, it cannot be struck down.

18. The issue as to whether the combined marks in the qualifying examination and Common Entrance Test can be considered for the purpose of admission to medical colleges was also considered by a learned single judge of this Court in R.Indra Vs. State of Tamil Nadu and Others, (1998) Writ LR 461. The learned single judge rejected the contention that the marks obtained in the entrance examination alone should be considered for admission. It was held that the State which was running various medical colleges is empowered to fix additional qualifications to consider the merit of the candidate.

19. It is no doubt true that in Ravindra Kumar Rai Vs. State of Maharashtra (supra) and other cases, the Supreme Court has laid down that the conduct of Common Entrance Test is mandatory, but that does not mean that the State has no power to prescribe an additional criteria. The Regulations issued by the Medical Council of India do not debar the State Government from making any additional guidelines for regulating the admission. Evaluating the merit by various modes is well known matter in the academic field. The MCI Regulations clearly show that the academic marks obtained in the qualification examination do play a vital role in the methodology of selection of candidates and it would be open to the State Government to prescribe comparative weightage as between the qualifying marks and the entrance examination marks, so long as the basic criteria laid down

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by the MCI Regulations is satisfied. Merely because under the scheme framed by the State Government, the marks obtained in the qualifying examination are also to be taken into consideration along with Common Entrance Test marks, it cannot be said that the State Policy is inconsistent or is in any way adverse to the MCI Regulations. The policy framed by the State Government is in the field for more than two decades and it is not demonstrated that this policy has prejudicially affected the student community at large. In the circumstances, we are of the opinion that it would not be proper to upset the practice which has worked for the last 22 years. In a given case, the policy may cause some hardship to some of the students, but that by itself cannot be a ground to hold that the policy is violative of Article 14 of the Constitution. In our opinion, the fact that a new syllabus was introduced in 2006 which is supposed to be tougher than the earlier syllabus is also no ground to depart from the policy which has been in the field for more than two decades.

20. In the above circumstances, we hold that there is no merit in the writ petitions and they are accordingly dismissed. Consequently, all the connected miscellaneous petitions are also dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Js/sm

Copy to:-

1. The Secretary to Government of Tamilnadu
   Education Department,
   Fort St. George, Chennai - 600 009.

2. The Secretary,
   Selection Committee,
   Directorate of Medical Education,
   Kilpauk, Chennai - 10.

1 cc to M/s. La.Law Advocte, Sr. 29078
2 ccs to Govt. Peader, sr. 29378 & 29377
1 cc to Mr.V.Ayyadurai, Advocate, Sr. 29107
1 cc to M/s. Gladys Daniel Advocate, Sr. 28985
1 cc to Mr.V.Kalyanaraman, Advcate, Sr. 29276

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